



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** A/E Group, Inc.  
**File:** B-227886.2  
**Date:** November 5, 1987

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### **DIGEST**

Sole-source award of a contract is not objectionable where the agency reasonably determined that only one source could supply the desired item, and the protester, who submitted the only response to the agency's notice of intent to negotiate a sole-source contract, refused to supplement its incomplete qualification statement. The agency could not, therefore, determine whether the protester was in fact qualified in order to adjudge whether a competitive procurement should be conducted.

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### **DECISION**

A/E Group, Inc., protests the award of a sole-source contract to the Association of American Railroads (AAR) by the Federal Railroad Administration (FRA). The procurement is for a rail network assessment study in support of the Peacekeeper Rail Garrison Project, a railroad-based missile program. A/E complains that FRA's determination that A/E was not qualified to submit a proposal in response to the announcement of intent to negotiate a sole-source contract was unreasonable, and that the awardee has a conflict of interest.

We deny the protest.

### **BACKGROUND**

The procurement was synopsisized in the Commerce Business Daily (CBD) on April 28, 1987. The CBD announcement gave notice of FRA's intent to negotiate a contract on a sole-source basis with AAR for a rail network study, but also provided that any party interested in the procurement could submit a qualification statement which would be evaluated for the purpose of determining whether a competitive procurement should be conducted. That statement was to address the following technical areas: research and development capability in raw network data collection and analysis, network analysis, railroad civil engineering and railroad operations with existing access to data bases

within all Class I railroads, existing permission to use those data bases without prejudice, experience in contracting with those railroads, and the issue of possible conflict of interest with any of the railroads (so as to ensure access to confidential railroad data without compromising the study or another railroad).

The CBD notice also stated that the qualification statement should address the following five specific areas: (1) experience (2) personnel; (3) facilities; (4) evidence of access to data bases for all Class I railroads; and (5) any other specific and pertinent information pertaining to the particular areas of the procurement that would enhance FRA's consideration and evaluation of the information submitted.

A/E, the only respondent to the CBD announcement, filed a qualification statement with FRA on May 11. FRA agreed to allow A/E to supplement its statement after indicating to the firm that it had not submitted sufficient information for FRA to determine whether A/E was qualified. At a May 27 meeting for that purpose, however, A/E refused to answer FRA's questions concerning the company's personnel qualifications, corporate experience, access to data, and corporate financial condition, insisting that FRA must request the information in writing. FRA responded that the requirements of the CBD synopsis were clear and that the agency would consider any additional information A/E wished to submit. A/E refused to submit any additional information.

In light of A/E's failure to submit any additional information, FRA proceeded with the sole-source award to AAR on June 23, after which A/E protested to our Office.

#### ANALYSIS

The Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(c)(1) (Supp. III 1985), permits an agency to use noncompetitive procedures where there is only one responsible source that can satisfy the government's needs. Before using noncompetitive procedures, an agency must execute a written justification for doing so that is to include a description of efforts made to ensure that offers are solicited from as many sources as is practicable, and a description of any market survey conducted or a statement of the reasons why a market survey was not conducted. 41 U.S.C. § 253(f). The statutory provisions are implemented by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 6.302-1 (1986).

Because the overriding mandate of CICA is for "full and open competition" in government procurements, 41 U.S.C. § 253(a), this Office will closely scrutinize sole-source procurements under the exception to that mandate provided by 41 U.S.C. § 253(c)(1). C&S Antennas, Inc., B-224549, Feb. 13, 1987, 66 Comp. Gen. \_\_\_\_ (1987), 87-1 C.P.D. ¶ 161. Where, however, the agency has substantially complied with the procedural requirements of CICA for the written justification for and higher-level approval of the contemplated sole-source action and publication of the requisite CBD notice to solicit offers, we will not object to the sole-source award unless it is shown that there is no reasonable basis for it. Id. In sum, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Data Transformation Corp., B-220581, Jan. 16, 1986, 86-1 C.P.D. ¶ 55.

FRA, in justifying the sole-source award to AAR, states that A/E's qualification statement is deficient in that it fails to address fully the areas requested by the CBD announcement, particularly corporate experience, personnel, evidence of access to data, and capability in railroad civil engineering. FRA further asserts that A/E's submission is superficial, at best, in all respects, and that its qualification statement provided no basis on which FRA could determine A/E's corporate qualifications for a sophisticated multi-million dollar study and analysis critical to the nation's defense program. In addition, FRA states that A/E has admitted that it is not qualified to perform the entire study. FRA asserts that because the agency fully complied with the CICA mandate, stood ready to accept any supplemental information A/E offered to provide, and granted A/E the opportunity to make an oral presentation of its qualifications to the contracting officer and program personnel, A/E should not be permitted to escape the consequences of its refusal to provide adequate information for FRA to make a judgment about its qualifications.

We find that FRA's grounds for its sole-source action are reasonable. The record shows that FRA complied with the requirements of CICA for a sole-source procurement. A written justification was prepared; a market survey was conducted; and the CBD notice clearly advised prospective offerors of the specific areas to be addressed in their qualification statements. Our review of A/E's submissions verifies FRA's conclusion that the firm did not specifically address the areas listed in the CBD notice. A/E listed the qualifications of only one of the proposed personnel, the project manager, whose experience dated from 1972-75; provided only generalizations about other personnel; did

not address corporate experience; did not describe its facilities; and did not provide evidence of access to data bases beyond a statement that the proposed project manager is "on a first name basis with key clearance staff" of the railroads.

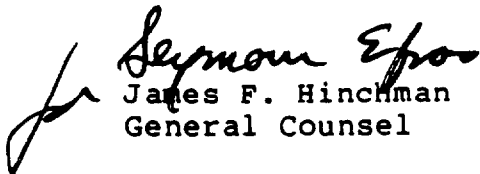
The record verifies that FRA also gave A/E every opportunity to elaborate on its initial submission. Instead of seizing that opportunity, A/E refused to supplement its original inadequate qualification statement, and challenged the FRA's and the awardee's competence. Given these facts, we cannot conclude that FRA unreasonably determined that A/E was not an available source to perform the rail network study.

A/E also alleges that AAR has a conflict of interest since it represents the railroad industry, and that any award to AAR is therefore improper. The CBD notice provided that the any potential contractor may not have a conflict of interest with any of the railroads to be studied because access to confidential railroad data must be ensured without the potential to compromise the study itself or any of the participating railroads. FRA responds to A/E's allegation by noting that there is no factual basis to conclude that award of a contract to study and analyze a rail network would impair AAR's objectivity in performing the contract work.

We do not find any evidence in the record to support A/E's bare allegation that contracting with AAR will result in a study of questionable objectivity. In its justification for other than full and open competition, FRA states that AAR is the only contractor with existing access to the data required from the railroads, and the only contractor with the breadth of experience required and the capability to do all the work specified. The purpose of the specified work is to determine the weight and clearance restriction for a given railroad train, to determine upgrade requirements in specific areas of the rail network, and to develop detailed data on the track network. A/E does not explain how, and we do not see how, the fact that AAR is an association of

railroads in itself establishes that AAR's objectivity in performing the contract work will be compromised or that the work otherwise will not legitimately meet the FRA's needs.

The protest is denied.

 Seymour E. Hinchman  
James F. Hinchman  
General Counsel